

AMENDED IN SENATE AUGUST 31, 2000

AMENDED IN ASSEMBLY MAY 26, 2000

AMENDED IN ASSEMBLY APRIL 26, 2000

AMENDED IN ASSEMBLY APRIL 6, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2357

Introduced by Assembly Member Honda
(Coauthors: Assembly Members Aroner, Cardenas,
Gallegos, and Kuehl)
(Coauthor: Senator Bowen)

February 24, 2000

An act to amend Section 230 of, *and to add Section 230.1 to*, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2357, as amended, Honda. Victims of Domestic Violence Employment Leave Act.

Existing law prohibits an employer from discharging or discriminating or retaliating against an employee who is a victim of domestic violence for taking time off from work to obtain judicial relief to help ensure the health, safety, or welfare of the employee or his or her child. Existing law provides that an employee who has been discharged or discriminated or retaliated against in violation of these provisions is entitled to reinstatement and reimbursement of lost wages and benefits. The failure of an employer to rehire,

promote, or restore an eligible employee constitutes a misdemeanor.

This bill would enact the Victims of Domestic Violence Employment Leave Act, which *with regard to employers with 25 or more employees* would additionally prohibit an employer from discharging or discriminating or retaliating against an employee who is a victim of domestic violence and who takes time off to seek medical attention, to obtain services from a domestic violence program, to obtain psychological counseling, or to participate in safety planning. ~~The~~

With regard to all employers, regardless of the number of employees, the bill would require the employee to give the employer reasonable advance notice of the intention to take time off *for any of the purposes summarized above, as provided.* ~~Under the bill, and~~ an employer would be required to maintain the confidentiality of an employee who requests time off pursuant to *provisions of existing law or under provisions added by the bill.* ~~By~~

By revising and expanding the scope of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. (a) This act shall be known and may be
2 cited as the Victims of Domestic Violence Employment
3 Leave Act.

4 (b) The Legislature finds and declares the following:

5 (1) Domestic violence affects many persons without
6 regard to age, race, educational level, socioeconomic
7 status, religion, or occupation.

8 (2) Domestic violence is a crime that has a devastating
9 effect on families, communities, and the workplace.

(3) Domestic violence impacts productivity, effectiveness, absenteeism, and employee turnover in the workplace.

(4) The National Crime Survey estimates that 175,000 days per year are missed from paid work due to domestic violence.

(5) The study also found that 56 percent of the victims were late for work at least five times a month, 28 percent of the victims had to leave work early at least five times a month, and 54 percent missed at least three days a month, all due to domestic violence.

(6) Victims of domestic violence may be vulnerable at work when trying to end an abusive relationship because the workplace may be the only place where the perpetrator knows to contact the victim.

(7) Employers must be sensitive to the needs of employees who are experiencing domestic violence and be responsive to those needs through personnel leave and benefits policies.

(8) Employees who commit acts of domestic violence at or away from the workplace should be disciplined in the same manner as employees who commit other acts of violence or harassment at or away from the workplace.

~~SEC. 2. Section 230 of the Labor Code is amended to read:~~

~~230. (a) No employer shall discharge or in any manner discriminate against an employee for taking time off to serve as required by law on an inquest jury or trial jury, if the employee, prior to taking the time off, gives reasonable notice to the employer that he or she is required to serve.~~

~~(b) No employer shall discharge or in any manner discriminate or retaliate against an employee, including, but not limited to, an employee who is a victim of a crime, for taking time off to appear in court to comply with a subpoena or other court order as a witness in any judicial proceeding.~~

~~(c) No employer shall discharge or in any manner discriminate or retaliate against an employee who is a victim of domestic violence as defined in Section 6211 of~~

1 ~~the Family Code for taking time off from work to attend~~
2 ~~to any of the following:~~
3 ~~(1) To seek medical attention for injuries caused by~~
4 ~~domestic violence.~~
5 ~~(2) To obtain or attempt to obtain any relief,~~
6 ~~including, but not limited to, a temporary restraining~~
7 ~~order, restraining order, or other injunctive relief, to help~~
8 ~~ensure the health, safety, or welfare of a domestic~~
9 ~~violence victim or his or her child.~~
10 ~~(3) To obtain services from a domestic violence~~
11 ~~shelter, program, or rape crisis center as a result of~~
12 ~~domestic violence.~~
13 ~~(4) To obtain psychological counseling related to an~~
14 ~~experience of domestic violence.~~
15 ~~(5) To participate in safety planning and take other~~
16 ~~actions to increase safety from future domestic violence,~~
17 ~~including temporary or permanent relocation.~~
18 ~~(d) (1) As a condition of taking time off for a purpose~~
19 ~~set forth in subdivision (c), the employee shall give the~~
20 ~~employer reasonable advance notice of the employee's~~
21 ~~intention to take time off, unless the advance notice is not~~
22 ~~feasible.~~
23 ~~(2) When an unscheduled absence occurs, the~~
24 ~~employer shall not take any action against the employee~~
25 ~~if the employee, within a reasonable time after the~~
26 ~~absence, provides a certification to the employer.~~
27 ~~Certification shall be sufficient in the form of any of the~~
28 ~~following:~~
29 ~~(A) A police report indicating that the employee was~~
30 ~~a victim of domestic violence.~~
31 ~~(B) A court order protecting or separating the~~
32 ~~employee from the perpetrator of an act of domestic~~
33 ~~violence, or other evidence from the court or prosecuting~~
34 ~~attorney that the employee appeared in court.~~
35 ~~(C) Documentation from a medical professional,~~
36 ~~domestic violence advocate, health care provider, or~~
37 ~~counselor that the employee was undergoing treatment~~
38 ~~for physical or mental injuries or abuse resulting in~~
39 ~~victimization from an act of domestic violence.~~

1 ~~(3) To the extent allowed by law, employers shall~~
2 ~~maintain the confidentiality of any employee requesting~~
3 ~~leave under subdivision (c).~~

4 ~~(e) Any employee who is discharged, threatened with~~
5 ~~discharge, demoted, suspended, or in any other manner~~
6 ~~discriminated or retaliated against in the terms and~~
7 ~~conditions of employment by his or her employer because~~
8 ~~the employee has taken time off for a purpose set forth in~~
9 ~~subdivision (a), (b), or (c) shall be entitled to~~
10 ~~reinstatement and reimbursement for lost wages and~~
11 ~~work benefits caused by the acts of the employer. Any~~
12 ~~employer who willfully refuses to rehire, promote, or~~
13 ~~otherwise restore an employee or former employee who~~
14 ~~has been determined to be eligible for rehiring or~~
15 ~~promotion by a grievance procedure or hearing~~
16 ~~authorized by law is guilty of a misdemeanor.~~

17 ~~(f) (1) Any employee who is discharged, threatened~~
18 ~~with discharge, demoted, suspended, or in any other~~
19 ~~manner discriminated or retaliated against in the terms~~
20 ~~and conditions of employment by his or her employer~~
21 ~~because the employee has exercised his or her rights as set~~
22 ~~forth in subdivision (a), (b), or (c) may file a complaint~~
23 ~~with the Division of Labor Standards Enforcement of the~~
24 ~~Department of Industrial Relations pursuant to Section~~
25 ~~98.7.~~

26 ~~(2) Notwithstanding any time limitation in Section~~
27 ~~98.7, an employee filing a complaint with the division~~
28 ~~based upon a violation of subdivision (c) shall have one~~
29 ~~year from the date of occurrence of the violation to file~~
30 ~~his or her complaint.~~

31 ~~(g) An employee may use vacation, personal leave, or~~
32 ~~compensatory time off that is otherwise available to the~~
33 ~~employee under the applicable terms of employment,~~
34 ~~unless otherwise provided by a collective bargaining~~
35 ~~agreement, for time taken off for a purpose specified in~~
36 ~~subdivision (a), (b), or (c). The entitlement of any~~
37 ~~employee under this section shall not be diminished by~~
38 ~~any collective bargaining agreement term or condition.~~

39 ~~SEC. 3.—~~

1 *SEC. 2. Section 230 of the Labor Code is amended to*
2 *read:*

3 230. (a) No employer shall discharge or in any
4 manner discriminate against an employee for taking time
5 off to serve as required by law on an inquest jury or trial
6 jury, if the employee, prior to taking the time off, gives
7 reasonable notice to the employer that he or she is
8 required to serve.

9 (b) No employer shall discharge or in any manner
10 discriminate or retaliate against an employee, including,
11 but not limited to, an employee who is a victim of a crime,
12 for taking time off to appear in court to comply with a
13 subpoena or other court order as a witness in any judicial
14 proceeding.

15 (c) No employer shall discharge or in any manner
16 discriminate or retaliate against an employee who is a
17 victim of domestic violence as defined in Section 6211 of
18 the Family Code for taking time off from work to obtain
19 or attempt to obtain any relief, including, but not limited
20 to, a temporary restraining order, restraining order, or
21 other injunctive relief, to help ensure the health, safety,
22 or welfare of a domestic violence victim or his or her
23 child.

24 (d) *(1)* As a condition of taking time off for a purpose
25 set forth in subdivision (c), the employee shall give the
26 employer reasonable ~~notice that he or she is required to~~
27 ~~appear in court unless an unscheduled or emergency~~
28 ~~court appearance is required for the health, safety, or~~
29 ~~welfare of the domestic violence victim or his or her child.~~
30 ~~When~~ *advance notice of the employee's intention to take*
31 *time off, unless the advance notice is not feasible.*

32 ~~(2) When an unscheduled or emergency court~~
33 ~~appearance is required~~ *absence occurs, the employer*
34 *shall not take any action against the employee if the*
35 *employee, within a reasonable time after the appearance*
36 *absence, provides a certification to the employer.*
37 *Certification shall be sufficient in the form of any of the*
38 *following:*

39 ~~(A) A police report indicating that the employee was~~
40 ~~a victim of domestic violence.~~

1 (B) A court order protecting or separating the
2 employee from the perpetrator of an act of domestic
3 violence, or other evidence from the court or prosecuting
4 attorney that ~~he or she~~ the employee has appeared in
5 court.

6 (C) Documentation from a medical professional,
7 domestic violence advocate, health care provider, or
8 counselor that the employee was undergoing treatment
9 for physical or mental injuries or abuse resulting in
10 victimization from an act of domestic violence.

11 (3) To the extent allowed by law, employers shall
12 maintain the confidentiality of any employee requesting
13 leave under subdivision (c).

14 (e) Any employee who is discharged, threatened with
15 discharge, demoted, suspended, or in any other manner
16 discriminated or retaliated against in the terms and
17 conditions of employment by his or her employer because
18 the employee has taken time off for a purpose set forth in
19 subdivision (a), (b), or (c) shall be entitled to
20 reinstatement and reimbursement for lost wages and
21 work benefits caused by the acts of the employer. Any
22 employer who willfully refuses to rehire, promote, or
23 otherwise restore an employee or former employee who
24 has been determined to be eligible for rehiring or
25 promotion by a grievance procedure or hearing
26 authorized by law is guilty of a misdemeanor.

27 (f) (1) Any employee who is discharged, threatened
28 with discharge, demoted, suspended, or in any other
29 manner discriminated or retaliated against in the terms
30 and conditions of employment by his or her employer
31 because the employee has exercised his or her rights as set
32 forth in subdivision (a), (b), or (c) may file a complaint
33 with the Division of Labor Standards Enforcement of the
34 Department of Industrial Relations pursuant to Section
35 98.7.

36 (2) Notwithstanding any time limitation in Section
37 98.7, an employee filing a complaint with the division
38 based upon a violation of subdivision (c) shall have one
39 year from the date of occurrence of the violation to file
40 his or her complaint.

(g) An employee may use vacation, personal leave, or compensatory time off that is otherwise available to the employee under the applicable terms of employment, unless otherwise provided by a collective bargaining agreement, for time taken off for a purpose specified in subdivision (a), (b), or (c). The entitlement of any employee under this section shall not be diminished by any collective bargaining agreement term or condition.

SEC. 3. Section 230.1 is added to the Labor Code, to read:

230.1. (a) In addition to the requirements and prohibitions imposed on employees pursuant to Section 230, an employer with 25 or more employees may not discharge or in any manner discriminate or retaliate against an employee who is a victim of domestic violence as defined in Section 6211 of the Family Code for taking time off from work to attend to any of the following:

(1) To seek medical attention for injuries caused by domestic violence.

(2) To obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence.

(3) To obtain psychological counseling related to an experience of domestic violence.

(4) To participate in safety planning and take other actions to increase safety from future domestic violence, including temporary or permanent relocation.

(b) (1) As a condition of taking time off for a purpose set forth in subdivision (a), the employee shall give the employer reasonable advance notice of the employee's intention to take time off, unless the advance notice is not feasible.

(2) When an unscheduled absence occurs, the employer shall not take any action against the employee if the employee, within a reasonable time after the absence, provides a certification to the employer. Certification shall be sufficient in the form of any of the following:

(A) A police report indicating that the employee was a victim of domestic violence.

1 (B) A court order protecting or separating the
2 employee from the perpetrator of an act of domestic
3 violence, or other evidence from the court or prosecuting
4 attorney that the employee appeared in court.

5 (C) Documentation from a medical professional,
6 domestic violence advocate, health care provider, or
7 counselor that the employee was undergoing treatment
8 for physical or mental injuries or abuse resulting in
9 victimization from an act of domestic violence.

10 (3) To the extent allowed by law, employers shall
11 maintain the confidentiality of any employee requesting
12 leave under subdivision (a).

13 (c) Any employee who is discharged, threatened with
14 discharge, demoted, suspended, or in any other manner
15 discriminated or retaliated against in the terms and
16 conditions of employment by his or her employer because
17 the employee has taken time off for a purpose set forth in
18 subdivision (a) shall be entitled to reinstatement and
19 reimbursement for lost wages and work benefits caused
20 by the acts of the employer. Any employer who willfully
21 refuses to rehire, promote, or otherwise restore an
22 employee or former employee who has been determined
23 to be eligible for rehiring or promotion by a grievance
24 procedure or hearing authorized by law is guilty of a
25 misdemeanor.

26 (d) (1) Any employee who is discharged, threatened
27 with discharge, demoted, suspended, or in any other
28 manner discriminated or retaliated against in the terms
29 and conditions of employment by his or her employer
30 because the employee has exercised his or her rights as set
31 forth in subdivision (a) may file a complaint with the
32 Division of Labor Standards Enforcement of the
33 Department of Industrial Relations pursuant to Section
34 98.7.

35 (2) Notwithstanding any time limitation in Section
36 98.7, an employee filing a complaint with the division
37 based upon a violation of subdivision (a) shall have one
38 year from the date of occurrence of the violation to file
39 his or her complaint.

1 (e) An employee may use vacation, personal leave, or
2 compensatory time off that is otherwise available to the
3 employee under the applicable terms of employment,
4 unless otherwise provided by a collective bargaining
5 agreement, for time taken off for a purpose specified in
6 subdivision (a). The entitlement of any employee under
7 this section shall not be diminished by any collective
8 bargaining agreement term or condition.

9 (f) This section does not create a right for an employee
10 to take unpaid leave that exceeds the unpaid leave time
11 allowed under, or is in addition to the unpaid leave time
12 permitted by, the federal Family and Medical Leave Act
13 of 1993 (29 U.S.C. Sec. 2606 et seq.).

14 SEC. 4. No reimbursement is required by this act
15 pursuant to Section 6 of Article XIII B of the California
16 Constitution because the only costs that may be incurred
17 by a local agency or school district will be incurred
18 because this act creates a new crime or infraction,
19 eliminates a crime or infraction, or changes the penalty
20 for a crime or infraction, within the meaning of Section
21 17556 of the Government Code, or changes the definition
22 of a crime within the meaning of Section 6 of Article
23 XIII B of the California Constitution.

